



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Ms. Jackie Denman
City Secretary
City of Lancaster
P.O. Box 940
Lancaster, Texas 75146-0940

OR95-1471

Dear Ms. Denman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 24588.

The City of Lancaster (the "city") has received a request for certain information regarding the I-45 Corridor Airport Alliance. The city has submitted samples of meeting notes for our review. The city asserts that marked portions of these documents are protected from required public disclosure under section 552.103 or section 552.106.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You assert that certain marked portions of the meeting notes contain information relating to a lawsuit in which the city has intervened as a plaintiff and a contested application for a waste management permit. We conclude that the city may withhold information relating to the lawsuit because the city is a party to that litigation. Based on your assertions, we assume that the city is actually a formal party in the proceeding regarding the application for the waste management permit. Assuming that this is the case, we conclude that the city may also withhold information relating to that proceeding.

If it is not the case, the city must release the information. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.106 excepts "[a] draft or working paper involved in the preparation of proposed legislation." Section 552.106 protects the internal deliberative processes of a governmental body in enacting legislation. Open Records Decision No. 248 (1980). It does not, however, except basically factual information. Open Records Decision No. 344 (1982). Although section 552.106 is designed to encourage frank discussion on policy matters between subordinates or advisors of a legislative body, it is specifically applicable only to "preparation of proposed legislation." Open Records Decision No. 429 (1985) at 5. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987).

You state that the committee at issue is "working to prepare an Interlocal Agreement for action by four legislative bodies." You also suggest that the committee is authorized by the four bodies to prepare recommendations and proposals. Based on these assertions and on our review of the meeting notes, we conclude that the material that you have marked may be excepted from public disclosure under section 552.106.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 24588

Enclosures: Submitted documents

cc: Ms. Zoa Ann Ragsdale
P.O. Box 934
Lancaster, Texas 75146
(w/o enclosures)